

EASTERN DISTRICT OF TEXAS

CIVIL ACTION NO. 1:18-CV-227

Defendant.

After careful consideration, the court concludes plaintiff's objections are without merit. A review of the application to proceed *in forma pauperis* submitted along with plaintiff's supplemental objections reveals plaintiff has maintained a balance in his prison account far in excess of that required to pay the initial partial filing fee as ordered. Accordingly, plaintiff's objections should be overruled. Additionally, in the alternative, the complaint should be dismissed for lack of subject-matter jurisdiction.

The Federal Tort Claims Act (FTCA) provides a limited waiver of sovereign immunity for those claims regarding “injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment” 28 U.S.C. § 2679(b)(1). A claim is not actionable in federal court, however, unless the claimant has exhausted administrative remedies with the appropriate agency. 28 U.S.C. § 2675(a).

Plaintiff failed to allege or demonstrate he exhausted the available tort claim remedies by having his claim finally denied by the Bureau of Prisons prior to filing this action. The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies. *McNeil v. United States*, 508 U.S. 106, 113 (1993). This court may not consider a prematurely filed FTCA action, even where no substantial progress has been made in the litigation. *Id.* at 110. Therefore, this action must be dismissed for lack of subject-matter jurisdiction.

O R D E R

Accordingly, plaintiff’s objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge’s recommendation.

SIGNED at Beaumont, Texas, this 11th day of May, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE